Supreme Court, U.S.
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No. 98-407

In The

Supreme Court of the United States

October Term, 1998

VINCENT C. PIANO, a/k/a Vic Piano
and LOUISE PIANO,

Petitioners,

vs.

ALBERT F. NASUTI, Trustee,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

REPLY BRIEF FOR PETITIONERS

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STATEMENT OF THE CASE

This is an action springing from an adversary complaint in a Chapter 7 bankruptcy proceeding in which the Trustee alleges, inter alia, that certain transfers of real and personal property made by Mr. Piano to his wife were fraudulent under the United States Bankruptcy Code and New York Debtor and Creditor Law, specifically 276 of New York Debtor and Creditor Law.

Petitioners timely filed their petition for writ of certiorari which was docketed on September 8, 1998. Respondents filed a response in opposition on or about October 7, 1998 objecting to statements of certain facts by the petitioners and raising three separate reasons for denying the writ. Petitioners timely file their reply to the arguments of the respondents.

REASONS FOR GRANTING THE WRIT

I.

THIS CASE CONCERNS AN IMPORTANT FEDERAL QUESTION.

The issues addressed in the Petition for Certiorari warrant review by the Court because they involve federal questions.

As stated in the Petition for Writ of Certiorari, the petition revolves around the Fifth Amendment to the United States Constitution which provides in relevant part: "No person shall . . . be deprived of life, liberty, or property, without due process of law. . . ."

The principle presented by the Petitioner is that an owner of property may dispose of his possessions, if the owner is not obligated to another and any such transfer is not subject to question from any source. *In re Vitelli's Estate*, 261 N.Y.S. 266, 268 (Sur. Ct. 1932).

The bankruptcy court committed error in denying the Petitioner his Constitutionally guaranteed right to dispose of his property at a time when the Petitioner had no debts and no known future creditors.

Finally, this case presents a question important to the public interest because if a person were unable to transfer all of his assets to another person or entity without consideration at a time when he had no debts and no known liabilities then every irrevocable trust would be rendered invalid. Thus, the facts of this case are not unique and affects more than the parties to this case.

Further, if the case before the Court were allowed to stand as the law of the land, then all "future" creditors could use the case as precedent to reach back in time and set aside every transfer of assets that deprived them of payment. In the case of an irrevocable trust, what would prevent a future creditor such as the internal revenue service from invading the trust at will? Any future creditor would no longer be bound by the present assets of the creditor but could instead take account of the prior worth of the creditor comfortable in the knowledge that prior transfers could be set aside. No financial planner or estate attorney or tax attorney or accountant could rely upon the long standing principles set forth in the United States Constitution granting every person the right to freely dispose of his property. This case stands firmly for the principle that an unknown and unanticipated future creditor may set aside a prior lawful transfer of assets by a person solvent at the time of the transfer. There are few Federal questions rising to greater importance than the property rights of every person in this country.

II.

THIS CASE PRESENTS QUESTIONS OF LAW AND OBVIOUS AND EXCEPTIONAL ERROR WAS PRESENT IN THE COURTS BELOW.

This case presents a question of law as to the court's interpretation of the § 276 of the New York Debtor and Creditor Law under the Constitution of the United States.

Under the Rule 10 of The Rules Of The Supreme Court Of The United States, the Court may grant Certiorari when

> a United States court of appeals has . . . so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power.

S. Ct. Rule 10.

Here, the lower courts have departed from the usual course of judicial proceedings as more fully explained in Parts II, III, and IV of the Petition for Writ of Certiorari. Furthermore, the errors as described in the petition are obvious and exceptional.

Graver Tank & Mfg. Co., Inc. v. Linde Air Products Co., 336 U.S. 271, relied upon by respondent is inapposite. In Graver, The court reasoned that the "clearly erroneous' standard was especially applicable because the evidence there was primarily expert testimony. Here, the issues presented are questions of law, not scientific demonstrations.

III.

PETITIONERS HAVE RAISED THE CONSTITUTIONAL CLAIM IN THE COURTS BELOW.

Petitioners have sufficiently presented a constitutional claim based on the Fifth Amendment to the United States Constitution in the courts below.

Here, petitioner has described the fundamental right at issue and the courts below understood the constitutional question presented. The petitioners have consistently raised the following issue throughout:

> Whether it is one of the most primary principles of property law that an owner thereof is entirely at liberty to dispose of any part or all of his possessions, either gratuitously or otherwise, at a time when he is not obligated to another and any such transfer is not subject to question from any source, the Court committed error in denying the debtor his constitutionally guaranteed rights to dispose of his property.

Specifically, Petitioners raised the identical issue stated as issue number sixteen in the appeal to the United States District Court for the Northern District of Georgia, and then repeated it as issue number seven in the appeal to the United States Circuit Court for the Eleventh Circuit. *See Taylor v. Illinois*, 484 U.S. 400 (1988). Furthermore the fundamental right at issue was raised at the commencement of each memorandum supporting the respective appeal, and was cited in closing throughout each memorandum as follows:

> If a person were unable to transfer all of his assets to another person or entity without consideration at a time when he had no debts and no known liabilities then every irrevocable trust would be rendered invalid.

Thus, this case would be properly before the United States Supreme Court upon its grant of certiorari to consider the federal constitutional issues presented.

CONCLUSION

The issues addressed in the Petition for Certiorari warrant review by the Court because they involve federal questions based on the Fifth Amendment to the United States Constitution. Furthermore, Petitioners have sufficiently presented this constitutional claim in the courts below. Finally, this case is proper for certiorari because this case presents a question of law and the lower courts have departed from the usual course of judicial proceedings.

Respectfully submitted,

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